

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAJOR LEAGUE BASEBALL,
PROPERTIES, INC.

Plaintiff,

v.

THE UPPER DECK COMPANY, LLC,

Defendant.

Civil Action 10-cv-732-RWS
ECF Case

**DECLARATION OF
BRENDAN J. O'ROURKE IN
SUPPORT OF PLAINTIFF'S
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER**

I, Brendan J. O'Rourke, declare as follows:

1. I am a partner at Proskauer Rose LLP, counsel to Plaintiff Major League Baseball Properties, Inc. ("MLBP").

2. I submit this declaration in support of MLBP's application for a temporary restraining order. MLBP is proceeding by order to show cause instead of by motion because MLBP has learned that the goods in question are being distributed in a time frame sooner than this matter could be heard by motion. Specifically, the infringing trading cards are in the process of being distributed.

3. No prior request for the relief sought herein has been made.

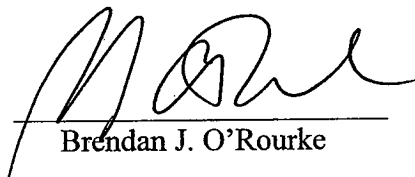
4. Attached as Exhibit A is a true and correct copy of the April 2, 1999 order granting plaintiffs' request for injunctive relief in *NBA Properties, Inc., et al. v. Dahlongea Mint, Inc., et al.*, No. 4:97-cv-00208-HLM (N. D. Ga.) (the "Dahlongea Order").

5. Attached as Exhibit B is a true and correct copy of the docket sheet from the action titled *NBA Properties, Inc., et al. v. Dahlongea Mint, Inc.*, No. 4:97-cv-00208-HLM (N.

D. Ga.) which indicates (at Docket entry 148) that the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's Dahlongea Order.

6. Attached as Exhibit C is a true and correct copy of the Final Judgment on Consent filed on August 14, 2009 and entered in the action titled *Major League Baseball Properties, Inc. v. Donruss Playoff, L.P. and Donruss LLC*, No. 09 Civ. 593(DC) (S.D.N.Y.).

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 31, 2010 in New York, New York.



Brendan J. O'Rourke